



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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David B. Cohen
Mayor

Public Hearing Date: October 9, 2007
Land Use Action Date: December 11, 2007
Board of Aldermen Action Date: December 17, 2007
90-Day Expiration Date: January 8, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Candace Havens, Chief Planner
Robert Merryman, Senior Planner

SUBJECT: \ Petition #278-07 of NOURIA/CID TRUST for SPECIAL PERMIT/ SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING USE and AMENDMENT TO PREVIOUS BOARD ORDERS [#11-93(4)] to expand an existing service station accessory use with food sales limited to 3 vending machines, to a larger retail convenience operation; change the existing split island self/full service gasoline island to 3 self service pumps & 1 full service pump; and waivers from the sign ordinance located at 979 WATERTOWN STREET, WEST NEWTON, MA, Ward 3, Section 31, Block 16, Lot 15, containing approximately 17,376 sq.ft. in a Business 1 District.

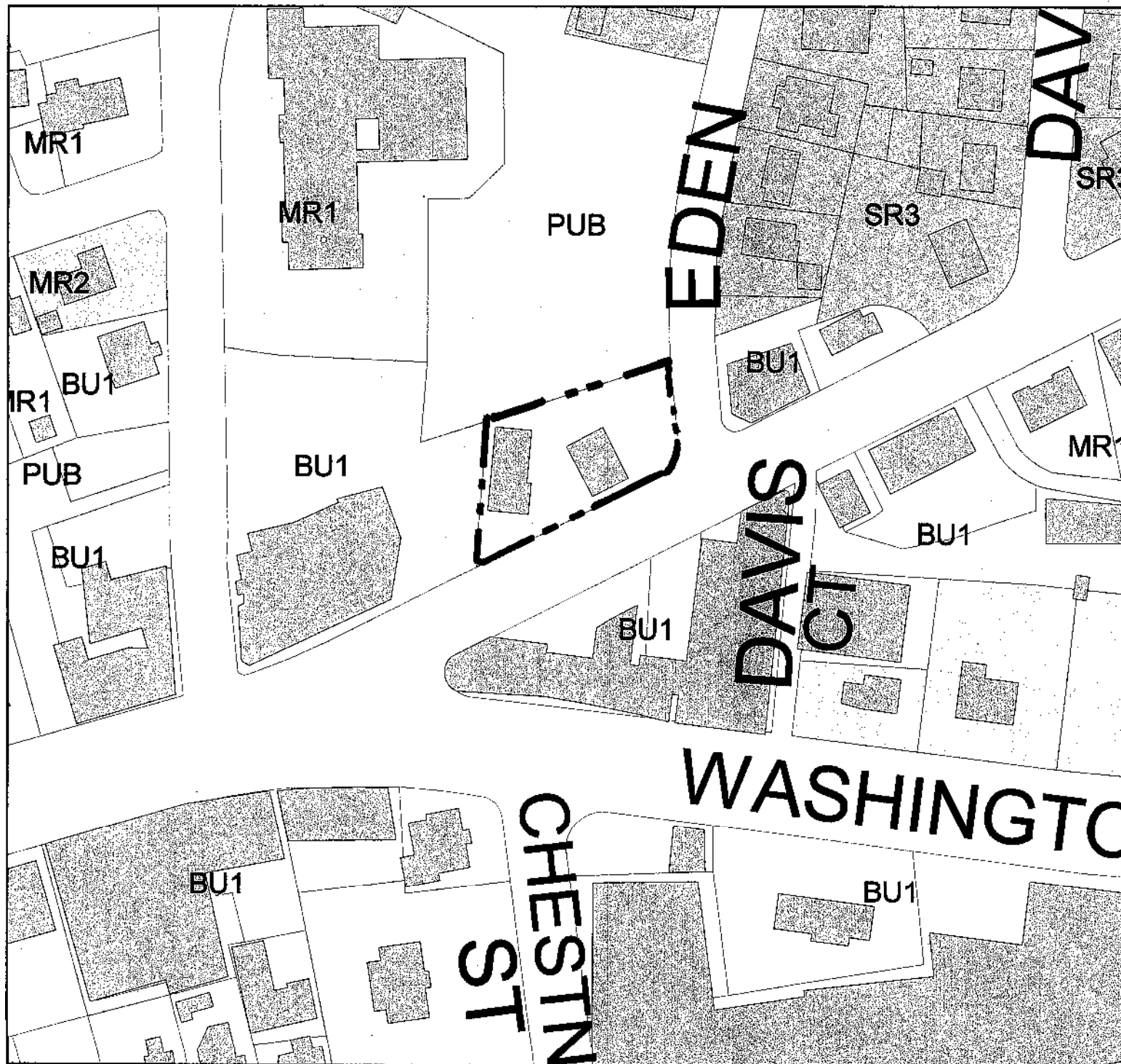
CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

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EXECUTIVE SUMMARY

Nouria et al are requesting a special permit, extension of non-conforming use and amendment to existing Board Orders to allow for alteration of the existing split island service station with automotive repair as the accessory use to change one full-service pump to self-service and to expand retail convenience offerings. The petitioners are also requesting waivers of the sign ordinance.



979 WATERTOWN STREET

City of Newton

| | |
|----------------------------------|-------------------|
| Newton Boundary Zoning Districts | |
| L Property Boundaries | Single Res. 2 |
| Street Names | .E7 Single Res. 3 |
| | Business 1 |
| | Business 2 |
| | Business 4 |
| | Business 5 |
| | Um. Manuf. |
| | MI Manuf. |
| | Multi-Res. 1 |
| | Multi-Res. 2 |
| | Multi-Res. 3 |
| | Multi-Res. 4 |
| | Mixed Use 1 |
| | Mixed Use 2 |
| | OS/Rec. |
| | Public Use |
| | Buildings |

1" = 118.1'



The information on this map is from a digital data base accessed using the Newton Geographic Information System (GIS). Newton cannot guarantee the accuracy of the information contained on this map. Each user of this map is responsible for determining its suitability for his or her intended use or purpose. City departments will not necessarily approve applications based solely on GIS data. Applicant's for city permits and licenses must inquire of the relevant city department for applicable requirements. City staff correct errors in these data as they are identified. Newton's GIS Administrator maintains records regarding the source materials and methods used to create the digital data and will disclose this information upon request.

DATA SOURCES: City of Newton GIS, Aerial Photography, and other sources. Map is for informational purposes only. Not for legal use.



BACKGROUND

The existing service station structure was constructed in 1964 (Board Order #501-64). However, gas station and vehicle repair uses existed on the site prior to the enactment of (City) zoning laws in 1922. In 1951, the site was placed within a Business 1 District, which does not allow gas stations. The existing use is nonconforming. In 1970 and 1973, the Board granted further extensions (#394-70 and #677-73) for site improvements, a freestanding sign and two additional pumps. Petition #11-93 for a proposed convenience store and self-service gasoline service station with a canopy was originally denied, then passed by the Board in Order #11-93(4). This allowed $\frac{1}{2}$ self-service gasoline station with a new canopy and 3 vending machines (*SEE ATTACHMENT "A" '9*

The petitioners have added signage over the years without approval from the Board of Aldermen. In 1993, the Board approved a second freestanding price sign. The City's Urban Design and Beautification Commission (*November 15, 2006*) approved identification changes for the free standing sign to "Shell," allowed the second freestanding sign to become a product sign instead of price sign and approved the "Snack Shop" and "Service Center" signs on the garage façade. The petitioners also modified the second freestanding sign without Urban Design and Beautification Commission approval.

The canopy over the bays has been painted bright yellow and has a red band that appears to be wired for illumination. There also are two signs that identify the location of the "Vacuum" and "Air." Nineteen strands of red and yellow streamers (*also considered as signs*) recently have been removed.

II. ELEMENTS OF THE PETITION

"Shell" is planning to convert this $\frac{1}{2}$ self-service, V2 full-service gasoline service station with auto repair accessory use, to a 3-pump/self-service and 1-pump/full-service gas station while maintaining the auto repair accessory use and expanding a retail convenience operation as an accessory use through a long-term lease with station owner Cicio Mazzola.

The petitioners are seeking approval of replacement of 3 vending machines (previously approved by the Board of Aldermen) with 3 coolers, a freezer, chip rack, gondola, product rack, a cigarette rack and sales counter. The submitted floor plans include an ATM Machine that already is in use. The plans indicate that the petitioners are maintaining the existing 3-bay vehicle repair service.

Section 30-11 (f)(1) allows the Board of Aldermen to grant a special permit for a self-service pumping facility in connection with a gas station. Because the gas station is a non-conforming use in a Business 1 District, the changes to the existing gas station require a special permit. Section 30-21 requires a Special Permit/Site Plan Approval and an Extension of Non-Conforming Use prior to conversion of one more pump to self-service and to increase retail convenience operations in a Business 1 District.

The petitioners request approval of "Snack Shop" and "Service Center" signs to be relocated from the garage wall to the freestanding sign and the addition of two "Shell" wall signs on the canopy. The petitioners stated that the existing red banding would not be

illuminated. The proposed freestanding sign is about 50 sq.ft. in area where 35 sq.ft. allowed in a Business 1 District.

HL ZONING RELIEF SOUGHT

The petitioners are seeking relief from or approvals through the following sections of the Zoning Ordinance:

- *Section 30-24(d) for Special Permit for self service gas station with an accessory convenience store;*
- *Section 30-24(d) for Special Permit in order to amend Board Orders #501-64, 349-70, 677-73, and 11-93(4) for self service gas station with an accessory retail convenience operation and signage;*
- *Section 30-24(d) for Special Permit in order to amend Board Order # 11-93(4) Condition #3 pertaining to limitations on pennants;*
- *Section 30-24(d) for Special Permit in order to amend Board Order # 11-93(4) Condition #8 pertaining to limitations on canopy signs;*

Section 30-24(d) for Special Permit in order to amend Board Order #11-93(4) Condition #11 pertaining to limitations on self service gasoline pumping islands;

- *Section 30-24(d) for Special Permit in order to amend Board Order# 11-93(4) Condition #12 pertaining to limitations on food service;*
- *Section 30-23 for Site Plan Approval;*
- > *Section 30-23 for Site Plan Approval in order to amend the site plans of Board Orders #501-64, 349-70, 677-73, and 11-93(4);*
- > *Section 30-23(b)(6) for Site Plan Approval for all sign locations;*
- *Section 30-23(b)(8) for Site Plan Approval for main free standing sign, altered free standing sign, and new canopy signs;*

Section 30-21(b)for an Extension of Nonconforming Use for the a proposed alteration of the existing service station to ³4 self service gas station with a retail convenience operation as the accessory use;

Section 30-20(1)(9) & (1) for a special permit for a new freestanding sign;

- *Section 30-20(1) for a special permit for a new freestanding exceeding 35 sq. ft. in area, 10 ft. in linear dimension and 16 ft. in height requirements;*
- *Section 30-20(1)(9) &(l) for a special permit for a new price panels underneath the freestanding sign;*
- *Section 30-200(9) &(l) for a special permit for 2 new snack shop and service center panels to be placed underneath the proposed price panels on the freestanding sign;*
- *Section 30-20W(9) &(l) for a special permit for a change to the existing second freestanding sign from a price sign to a product sign; and*

- *Section 30-20(1)(2) &(1) for a special permit for 2 new secondary "Shell" wall signs proposed to be located on the existing canopy.*

The City's Chief Zoning Code Official has completed his review of this application and a copy of his memorandum, dated August 6, 2007 is attached to this document. (SEE ATTACHMENT "B"9

IV. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing this petition the Board of Aldermen should consider the following:

- *Whether the proposed alteration of the existing partial self-service gas station with the automotive repair accessory use to a $\frac{3}{4}$ self service gas station with a increase in retail convenience operations use adversely affect the abutters or the immediate neighborhood;*
- *Whether the change to the a $\frac{3}{4}$ self-service gas station with a increase in retail convenience operations would be substantially more detrimental to the neighborhood than the existing nonconforming $\frac{1}{2}$ self-service gas station with the automotive repair accessory use and 3 vending machines;*
- *Whether the increased number and sizes of the proposed signs would be compatible with other nearby commercial uses, as well as the adjacent residential neighborhood;*
- *Whether freestanding identification signs are necessary to identify the site, given the increase in visual presence created by the new bright yellow and red facades of the service station and the canopy; and*
- > *Whether the increased number and sizes of the proposed signs would be comparable to other service station signage in the City.*

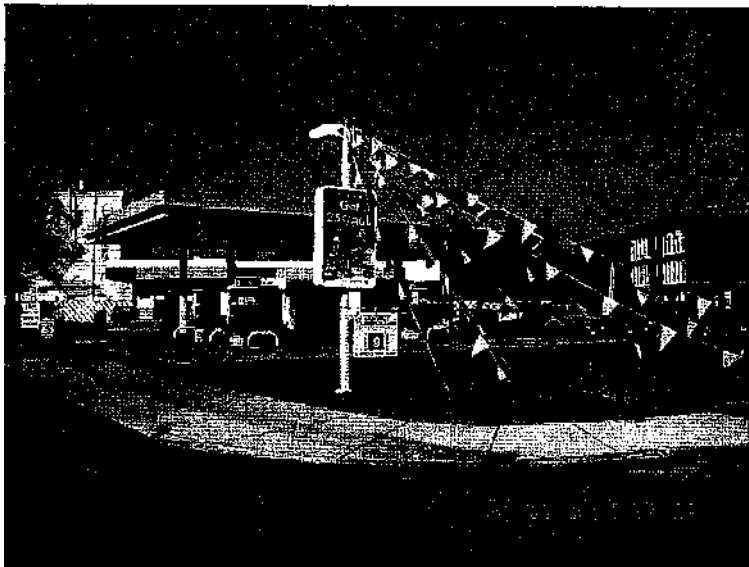
V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The subject site is located at the intersection of Watertown Street and Eden Avenue in West Newton Square, Ward 3, Section 31, Block 16, Lot 15 containing approximately 17,376 sq.ft. in a Business 1 District. The site consists of a 1,800 square foot, 3-bay service garage that includes three vending machines, an ATM, two pump islands and three curb cuts. There is on-site parking for 14 vehicles, a freestanding sign in the southwest corner on Watertown Street and a product information sign attached to a light post at the corner of Eden Avenue. The site lighting already has been improved and is of an appropriate design for the site and neighborhood. The site is well maintained, but it should be noted that the landscaping has deteriorated and needs replacement.

B. Neighborhood

The subject site is bordered on the north by the Eden Playground (behind the former Davis School) and the culverted Cheesecake Brook and on the west by the CVS and Store 24 parking lot. Across Watertown Street to the south are a car stereo shop and G & S paper and to the east across Eden Avenue are a mix of commercial uses, including a podiatrist, insurance agent, gun shop and cleaners. The site and both sides of Watertown Street in this area are within the Business 1 District. The Eden Playground is within a Public Use District and the neighborhood to the north is within a Single Residence 3 District.



WATERTOWN/EDEN AVE VIEW



EAST VIEW OF SIGN

VI. ANALYSIS

A. Technical Considerations/ Parking Requirements

The following compares the proposed changes with the ordinance requirements for the Business 1 District and the existing non-conforming use, per Section 30-15 Table 3, as follows:

| | REQUIRED | Existing | Proposed |
|----------------------|-----------------|-----------------------------------|-----------------------------------|
| Min. Lot Size | 10,000 s.f. | 17,376 s. f. | 17,376 s. f. |
| MM. Frontage | 70 ft. | 380 ft. | 380 ft. |
| Min. Setback | | | |
| Front | 6.5 ft. | 19 ft. 5 ft. (canopy) | 19 ft. 5 ft. (canopy) |
| Side | 7.12 ft. | 4.5 ft. | 4.5 ft. |
| Rear | 15 ft. | 4 ft. | 4 ft. |
| Max. No. of Stories | 2 stories | 1 story | 1 story |
| Max. Height | 24 ft. | 14.5 ft. | 14.5 ft. |
| Max Floor Area Ratio | 1.0 | 0.1 | 0.1 |

As the above table indicates, the proposed service station complies with the technical requirements of Section 30-15 Table 3, except the minimum front setback for the canopy and the minimum side and rear setbacks for the service station building, all of which are pre-existing non-conforming.

B. Parking Requirements

A technical parking analysis of the existing and proposed parking facility is provided per Section 30-19, as follows:

| | REQUIRED | EXISTING | PROPOSED |
|---------------------|---|---------------------------------|---------------------------------|
| Min.. Number Stalls | 1 stall/ 300 s.f. = 7 stall 1 per 3 employees =2 stall | 12-14 stalls (3 garage bays) | 12-14 stalls (3 garage bays) |
| Min. Setback | 5 ft. | 5 ft. | 5ft. |
| Min. Stall Length | 19 ft. | 19 ft. | 19 ft. |
| Min. Stall Width | 9 ft. | 9 ft. | 9 ft. |
| Max. Driveway Width | 25 ft. | 48 ft. | 48 ft. |
| Handicapped Stall | 1 | N/A | N/A |
| Handicap stall size | 12 ft. x 19 ft. | N/A | N/A |
| Landscape Screen | 3 1/2 ft. high evergreen | YES | Some screening missing |

As the above table depicts the existing 9 stall parking facility does not meet the requirements for maximum driveway width and landscape screening. Should the Board approve ³/₄ self-service and allow the increase in retail convenience operations, the Board may wish to discuss provisions for a handicapped parking stall as well. The petitioners also should replace missing landscaping approved in the prior Board Order.

The Planning Department believes that the customers using the gas pumps, service center or expanded retail convenience operation will be able to safely access the site with the existing layout of the parking facility.

C. Site Engineering

The City Engineer has no concerns about the proposed changes of use or signs since no physical alterations to the building or site are proposed.

D. Fire Department

The Assistant Fire Chief has reviewed and approved the submitted plans.

Extension of Nonconforming Use

The existing gasoline service station (partial self-serve) with auto repair use is nonconforming in the Business 1 District. The petitioners stated that 1 full-service gasoline pump will remain. Only cosmetic changes to the building are proposed on the canopy, building façade and signs. No physical changes to the building will take place.

The petitioners propose to replace the 3 vending machines previously allowed by the Board of Aldermen with 3 coolers, a freezer, a chip rack, gondola, a product rack, a cigarette rack and a sales counter. The floor plans include an ATM Machine already in use. The plans depict and the petitioners have stated that the existing 3-bay vehicle repair service center will be maintained.

F. Signage

A technical analysis of the existing and proposed signage is provided per Section 30-20, as follows:

| | REQUIRED | Existing | Proposed |
|--|------------------------------|---|---|
| Primary Free Standing Sign Max. Size Max. Height | 35 sq. ft. 16 ft. | 38.1 s.f. 20 ft. | 49.7 s.f. 20 ft. |
| Second Free Standing Sign Max. Size Max. Height | By Aldermanic Approval | 17.68 s.f. 10 ft. | 17.68 s.f. 10 ft. |
| Wall Signs Canopy (West side) (East side) | 50 s.f. 50 s.f. | None None | 13.2 s.f. 13.2 s.f. <hr/> 26.4 s.f. |
| Wall Signs (Watertown St. side) (Eden St. side) | 37 s.f. 50 s.f. | 10.4 s.f. | None |
| Banners | By Aldermanic Approval | 19 strings of yellow & red flags - removed | |
| Max. Directional Signs | 3 s.f. | | |
| TOTAL S.F. of signs on site | | 66.18 s.f. | 93.78 s.f. |

The petitioners are proposing a freestanding sign that will exceed the height and size requirements of the Sign Ordinance. The City has allowed pricing signs but generally has not allowed product signs or specific service signs to be attached to identification signs. However, the site would benefit from the consolidation of signs. If the Board approves of the added copy ("Snack Shop" and "Service Center") to the primary identification sign (with "Shell" logo), Planning Department staff believes that second freestanding "product" sign is not needed. In addition, the view of the primary identification sign is partially blocked by trees and it would be more visible to motorists if maintained at 16 feet in height.

The proposed wall/canopy signs are modest in scale and the overall square footage of signing is within that allowed. If the signs on the canopy are installed in place of signs on the façade of the building, the site will be well identified with fewer signs than presently exist. Planning Department notes that other portable advertising signs and banners are not in conformance with the sign regulations. It is our understanding that all such portable advertising signs and banners will be removed. Additionally, the Planning Department does not believe that additional illumination of the canopy's red band is needed.

F. Landscaping

The petitioners have not submitted a landscape plan. The Planning Department recommends that the petitioners comply with the previously approved landscape

plan, including replacement of the arborvitae that once screened Eden Playground from the station's parking area.

G. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement

The proposed redesign of the service station parking facility should not impact the convenience and safety of vehicular and pedestrian movement. The site contains more accessible parking than most city service stations. The Planning Department believes that provision of a handicapped parking stall would be appropriate, should the Board approve proposed changes in the snack shop.

2. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage

Proposed changes will not affect disposal of waste or drainage.

3. Screening of parking areas and structure from abutting properties

The previous Board Order's landscape plan provided adequate screening of the parking area and structure to satisfy this criterion. The petitioners should replant the site to meet the existing landscape requirement.

4. Consideration of site design including underground utilities

As per City standards, the petitioners should be expected to provide all utilities underground.

H. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use.

The service station existed at this site prior to enactment of zoning in 1922 (80+ years). ***The self-service with a expanded snack shop as proposed is an appropriate use of the site, provided that 1 full-service pump island remains.***

2. The use as developed and operated will not adversely affect the neighborhood.

The proposed change to a self-service station with a snack shop should not adversely affect the neighborhood since it represents a minimal change to one of the larger service station sites in Newton.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

The proposed improvements should not impact the convenience or safety of vehicular and pedestrian movement. The Planning Department believes that the site contains adequate parking for the expanded snack shop use.

4. Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved.

There are no changes to the existing site plan; access and circulation will remain the same.

VII. SUMMARY

The Planning Department believes that the proposed $\frac{3}{4}$ self-service $\frac{1}{4}$ full-service gas station with an increase in retail convenience operations (Snack Shop) will not be substantially more detrimental to the neighborhood than the existing service station with the automotive repair accessory use and 3 vending machines. By consolidating sign copy on one freestanding sign of 16 feet in height, removing the second freestanding sign and wall-mounted signs from the façade, and adding two modest (13.2 sq. ft.) identification signs on the canopy, the site should be adequately identified. No additional banners, product signs, or illumination of the canopy should be needed.

ATTACHMENTS:

ATTACHMENT A : Board in Order #11-93(4).

ATTACHMENT B: Zoning Review Memorandum dated August 6, 2007

#11-93(4)

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 20, 1993

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following **SPECIAL PERMIT/SITE PLAN APPROVAL AND EXTENSION OF NON-CONFORMING USE AND STRUCTURE** is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Susan M. Basham:

1. The Board finds that the self-service gasoline station serves the public convenience and welfare by having lower prices for self-service customers.

2. The Board finds that the proposed canopy is aesthetically compatible with the gas station use and other uses in the area.

3. The Board finds that self-service facility and the canopy are not substantially more detrimental than the existing gasoline station facility.

4. The Board finds that the site will have an improved appearance with the added landscaping and buffering.

PETITION NUMBER: #11-93(4)

PETITIONER: Cisidio Mazzolla

LOCATION: 979 Watertown Street, West Newton on land known as Section 31, Block 16, Lot 15, containing approximately 17,241 square feet of land.

OWNER: Cisidio Mazzolla

ADDRESS OF OWNER: 979 Watertown Street West Newton, MA._02165

TO BE USED FOR: Self-service gasoline station with a canopy

CONSTRUCTION: Metal

EXPLANATORY NOTE: Section 30-21 allows the Board of Aldermen to grant a special permit to extend a non-conforming use and structure. This special Permit allows the Board of Aldermen to amend Special Permit #501-64 by authorizing a canopy and self-service pump island.

Land referred to is in a Business 1 District.

Approved, subject to the following conditions:

1. That except as amended by Conditions #3, 8 and 9 below, all buildings, parking areas, driveways, walkways, landscaping and other site features shall be located and constructed consistent with plans entitled "Newton, MA. Watertown Street and Eden Avenue - Existing Site Plan, dated 2/22/93 and revised 10/25/93; General Arrangement Plan, dated 12/5/91 and revised 10/25/93; and "Lighting Plan", dated 12/5/91 and revised 10/25/93 by Texaco USA, Philadelphia, PA; and "Facility Elevations and Fire Suppression System" dated 1/2/91 by Bayside Engineering, submitted by the petitioner and filed herewith.

2. That the 50' wide curb cut be reduced to 42' width.

3. That a dumpster which shall be screened with a stockade fence shall be located on the north side of the building.

4. That the Petitioner shall use best efforts to recycle waste oil, tires, anti-freeze, glass and plastic containers and other materials used in the operation of the facility.

5. That all lighting shall be metal halide or equivalent and shall be reviewed and approved by the Director of Planning and Development. No light from fixtures on the site shall spill over onto adjoining properties, except for the fixture which presently exists on the northeast side of the building. The bulbs of such fixtures shall be concealed and shall not be visible off-site.

6. That a revised landscape plan be submitted for review and approval by the Director of Planning and Development. Such revised landscape plan shall show that the proposed mulch areas have been removed and replaced with landscaping and that the landscaping area at the east (Eden Ave.) end of the site be increased in size.

7. That the lowest edge of the canopy shall be 14 ft. to the fascia.

8. That there shall be no signs on the canopy.

9. That a second free standing sign with a 3' x 5' pricing sign be allowed which shall be reviewed by the Urban Design and Beautification Commission.

10. That all new utilities be placed underground and that the City Engineer approve the site utility, access and drainage plans.

11. That there shall be only one self-service pump island.

12. That there shall be no more than three vending machines on the site and there shall be no food sales other than through the vending machines.

13. That the petitioner shall continue to offer the level of service currently available.

14. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NON-CONFORMING USE and STRUCTURE until:

a. A final landscape plan including lighting and fixture design and fencing, indicating the location, number, size and type of landscaping and landscape materials to be installed shall have been submitted to and approved by the Director of Planning and Development and statement of such certifying such approval shall have been filed with the City Clerk and the Department of Inspectional Services.

b. That the City Engineer has reviewed and approved site grading and drainage, and a statement by the City Engineer certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

c. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a Certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NON-CONFORMING USE AND STRUCTURE with appropriate reference to the book and page of the recording of the Petitioner's title deed or notice of lease endorsed thereon.

d. A certified copy of such recorded notice shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.

15. That no building or structure, or portion thereof subject to this SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NON-CONFORMING USE and STRUCTURE shall be occupied until:

a. There shall have been filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that the finished grades and final construction details of the driveways, parking area, drainage systems, curbing and utility installations have been constructed to standards of the City of

Newton Engineering Department.

\.1 b. There shall have been filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, parking areas, fencing and lighting installation.

c. Notwithstanding the provisions of Section 15b, hereof, the Commissioner of Inspectional Services may issue one or more certificates/of temporary occupancy of all or portions of the buildings prior to installation of final landscaping provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

Under Suspension of Rules
Readings Waived and Approved
22 yeas 0 nays 2 absent (Ald. Creem and White)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT and SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 21, 1993. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT and SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.

ATTEST:

(SGD) EDWARD G. ENGLISH, City Clerk
Clerk of the Board of Aldermen

I, Edward G. English, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on December 21, 1993 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

Zoning Review Memorand

Dt: August 6, 2007

To: G. Michael Peirce, representing Nouria Energy

Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services

Re: Request for special permit for freestanding sign and new gasoline station canopy signs; amendments to prior Board Orders and plans.

| |
|---------------------------------|
| Applicant: Nouria Energy |
|---------------------------------|

Site: 979 Watertown St.

SBL: Section 31, Block 13, Lot 15

Zoning: BU-1

Lot Area: 17, 376 sq. ft.

Prior use: Gasoline service station

Prop. use: Gasoline service station

Background:

Gasoline service station and auto repair uses have existed at this site prior to adoption of zoning in 1922. In 1951, the site was rezoned BU-1, which does not allow gasoline service stations. As a result, the gasoline service use became nonconforming, and subsequent alterations to buildings, signage, service area and the site as undertaken from time to time have been subject to special permits granting extensions of non-conforming use. In 1994, the City authorized conversion of one full service island to self-service and the installation of a canopy subject to conditions stated in Board Order #11-93(4). This Board Order, along with certain preceding board orders contain conditions, which together govern signage at this site. The applicant seeks to alter the signage overall as part of re-branding this station to a Shell service station. Certain signs were approved by the Urban Design and Beautification Commission, as discussed below. These were installed pursuant to Building Permit #6120245, dated 12/11/2006. Continuing the re-branding process, the applicant now seeks to install a larger freestanding sign and also install signs on the pump area overhead canopy. These requests involve the amendment of prior board orders and additional special permits pursuant to the Sign Ordinance.

Summary of Urban Design and Beautification Commission Comments

The applicant appeared before the Commission to discuss various new Shell signs at the Commission meeting on 11/15/2006. The Commission explained that their jurisdiction was limited to signs subject to standard permitting procedures, and that alteration of signage governed by prior board orders required approval of the Board of Aldermen. Board jurisdiction applies to any major change to the freestanding signs and to contemplated canopy signs. As a result, the Commission addressed only sign changes pertaining to signage affected by tenancy changes and secondary signs

meeting applicable parameters. The Commission approved brand name change from Value to Shell on the main freestanding identification sign submitted with smaller size than the currently existing Value company sign (no building permit on file), content change from pricing to product on the second free standing sign not involving any change in sign size or construction, and two secondary wall signs on the service station building locating the "Snack Shop" and "Service Center". The Commission has not reviewed nor expressed an opinion on the proposed larger freestanding sign or the canopy signs.

Administrative determinations

¹ Board Orders #501-64, 349-70, 677-73, and 11-93(4) together govern the subject site, including signage. The initial B.O. #501-64, Condition 3 authorized a free-standing station identification sign, product and service wall signs, product identification on pumps, tire display cases, and lubricant display racks, and standard price signs on pumps. B.O. #11-93(4), Condition 8 prohibits signs on the overhead canopy while Condition 9 authorized a second free standing pricing sign, subject to review of the Urban Design and Beautification Commission. The currently proposed larger freestanding sign and canopy signs necessitate amendment of the above-referenced Board Orders and relevant plans as well as an additional special permit for the canopy signs. In addition, as the second freestanding sign has been substantially changed as to construction and content, approval by the Board is necessary under Section 30-20(1).

2. *Sections 30-20(0)(9) and 30-20(1) Exceptions*, provide that a special permit is required for standing signs and establish dimensional parameters. The proposed Shell freestanding sign has 49.7 sq.ft. exceeding the 35 sq.ft. area limit, has approximately 11 ft. vertical dimension (including spacer panel) exceeding the 10 ft. limit, and 20 ft. sign height, exceeding the 16 ft. height limit. In comparison, the recently authorized replacement sign has the following parameters: 37.5 sq. ft. area, 7.5 ft. max. linear dimension, and 16 ft. height. The currently existing main identification sign is a replacement sign to reflect business name change to Shell within the context of a freestanding sign previously approved by the City in connection with BO #11-93(4). However, no record of a building permit has been found on file for the most recent predecessor freestanding sign depicting "Value Gas & Repair" (now removed).

While B.O. #501-64 authorized a freestanding sign in connection with the reconstruction of the service station in 1964, at present, no official sign plan of record has been located describing the sign. Shortly thereafter, the City adopted the Sign Ordinance as part of the Zoning Ordinance on October 16, 1967. However, without a plan of record, it is not possible to determine whether or not the authorized sign became nonconforming under the Sign Ordinance. Subsequently in 1993, signage appears to have been modified pursuant to BO #11-93(4), yet record sign plans have again not been found. A Planning Department memorandum dated November 21, 1995 suggests that the freestanding sign actually constructed was somewhat smaller than the sign authorized by special permit. The current proposal seeks to return the freestanding sign to a larger sign exceeding standard parameters as noted above, thereby necessitating additional approvals for these exceptions by the Board of Aldermen pursuant to Section 30-20(1).

It is also noted that the two recently approved secondary wall signs stating "Snack Shop" and "Service Center" currently located on the service station building would be relocated to the freestanding sign and positioned on additional panels below the pricing panels. These additional signage elements necessitate approval by the Board of Aldermen pursuant to Section 30-20(1).

3. B.O. #11-94(3), Condition 12, limits food sales to three vending machines. The increased emphasis on food sales provided by the "Snack Shop" sign raises the question as to the extent of anticipated future food sales operations at this site. The applicant has provided a sketch of an area designated "Sales/waiting" with sales counter and multiple coolers, chip rack, and drink bin. As these will exceed the above limit on food sales, the petitioner needs to request Board of Aldermen approval to amend Condition 12.

In addition, it is noted for context that neither a gasoline service station nor a retail use accessory to a gasoline service station is allowed in a BU-1 zone where the subject station is located. In the BU-2 zone where gasoline service stations are allowed subject to special permit, an additional special permit is required in order to authorize accessory retail outlets. The applicant should provide more detailed information describing anticipated convenience and food sales operations in order that an appropriate determination may be made whether such use would be allowable on the subject BU-1 zoned site or whether additional zoning relief, such as extension of non-conforming use for an accessory retail convenience operation may be necessary pursuant to Section 30-21(b). In addition, the applicant would need to provide such additional parking as would be required pursuant to Section 30-19(d)(10).

4. The applicant seeks to amend B.O. #11-93(4) by eliminating Condition 8 prohibiting signs on the pump area overhead canopy. This is to allow installation of internally lighted "Shell" signs on the east and west elevations of the canopy, respectively. The City concurs that signs on canopies are conceptually similar to building wall signs. However, such signs must conform to Section 30-20(f)(2) pertaining to secondary wall signs, since the proposed (and existing) freestanding identification sign constitutes a principal sign per Section 30-20(f)(1). The proposed canopy signs would be 13.2 sq. ft. in area and otherwise conform to secondary sign dimensional parameters. It is noted, however, that an electrically wired red illumination bar has been installed on three sides of the overhead canopy as part of Shell design, and would be considered a sign if illuminated. In such case additional approval would be necessary for an extended canopy sign, pursuant to Section 30-20(1). The applicant's attorney indicates the bar has not been illuminated to date per a ruling of the Commissioner of Inspectional Services.

Moreover, should the existing 2 secondary wall signs ("Snack Shop"; & "Service Center") remain on the building, the proposed 2 new canopy signs would exceed the 2 sign limit established in Section 30-20(f)(2) and necessitate approval of such exception by the Board of Aldermen pursuant to Section 30-20(1). In addition, these signs are contingent upon the Board of Aldermen authorizing amendment of B.O. #11-93(4) eliminating Condition 8.

5. B.O. #11-93(4), Condition 11 limits self-serve operations to one self-service pump island. As the applicant indicates their current operations exceed this limitation, an amendment to the above referenced Condition 11 is necessary.
6. The proposed new signs meet the illumination requirements of Section 30-20(i)(1)-(3). It is also noted that signs need to comply with Section 30-20(i)(4) which states that signs may not be illuminated during the hours of 11:00 pm to 7:00 am, unless an exception is petitioned and obtained from the Board of Aldermen pursuant to Section 30-20(1) and 30-24(d), special permit.
7. Recent site visits have disclosed a number of discrepancies between authorizing documents and existing conditions which need to be remedied as follows:
 - a.) *Color band behind "Snack Shop" wall sign wraps around corner of building – is not part of approved sign plan. A revised sign plan needs to be submitted to the City requesting approval of modified sign.*
 - b.) *Metal signs on poles reading: "Vacuum" and "Air" have been mounted without permit. The applicant should request approval of these signs per standard sign permitting procedures pursuant to Section 30-20(0)(8) pertaining to directional signs.*
 - c.) *The City recently authorized limited modification to the second freestanding sign maintenance/content change only. However, this sign has been reconstructed in a manner substantially different than the sign plan approved per B.O. #11-93(4), Conditions 1, and 9, with new cabinet and advertisement "Get 25c/gal". The applicant should submit a sign plan for review and approval by the Urban Design and Beautification Commission per Condition 9, and to the Board of Aldermen for approval pursuant to Section 30-20(l). It is also noted that the applicant has indicated interest in establishing a procedure whereby sign content may change from time to time. This is a new concept with respect to the existing sign ordinance and would need to be further explored with the Commission as well as with the Board of Aldermen.*
 - d.) *Three sets of multiple pennant lines have been installed in violation of B.O. #501-64, Condition #3. The applicant should remove the pennants or seek Board of Aldermen approval to amend Condition #3.*
8. The proposed new signs meet the illumination requirements of Section 30-20(i)(1)-(3). It is also noted that signs need to comply with Section 30-20(i)(4) which states that signs may not be illuminated during the hours of 11:00 pm to 7:00 am, unless an exception is petitioned and obtained from the Board of Aldermen pursuant to Section 30-20(1) and 30-24(d), special permit.
9. While Section 30-23(b)(6) in conjunction with Section 30-24(a) requires the submittal of a landscape plan, the petitioner has elected not to provide a landscape plan, explaining that no site features are proposed to be altered. However, it has been the practice of the City to ensure appropriate landscaping in connection with freestanding signs. The applicant is responsible for providing information evidencing

compliance with the most recent landscape plan approved for the site pursuant to Board Order #11-03(4), Conditions 6 and 14(a).

10. It is noted that the submitted plans lack the stamps and signatures of applicable registered professionals preparing the plans and certifying required calculations. The applicant is responsible for providing stamped and signed plans not later than filing of the petition with the Clerk of the Board of Aldermen.

| 11. See "Zoning Ordinance" | Relief Summary" below. Zoning Relief Summary | Action Required |
|-------------------------------------|---|------------------------|
| | Freestanding Signs | |
| 30-20(f)(9) 30-20(1) | Approval of new larger freestanding sign with "Shell" identification logo. | X |
| 30-20(f)(9) 30-20(1) | Approval of freestanding sign exceeding 35 sq. ft. in area, exceeding 10 ft. in vertical linear dimension, and exceeding 16 ft. in height per submitted plans. | |
| 30-20(f)(9) 30-20(1) | Approval of price panels on free standing "Shell" identification sign, per submitted plans. | X |
| 30-20(f)(9) 30-20(1) | Approval of "Snack shop" and "Service Center" panels on freestanding "Shell" identification sign per submitted plans. | X |
| 30-20(f)(9) 30-20(1) | Approval of revised second freestanding sign per submitted plans. | X |
| | Wall Signs Overhead no | |
| 30-20(f)(2) 30-20(1) | Approval of one secondary wall sign with "Shell" name located on the east elevation of overhead canopy, per submitted plans. | X |
| 30-20(f)(2) 30-20(1) | Approval of one secondary wall sign with "Shell" name located on the west elevation of overhead canopy, per submitted plans. | X |
| 30-20(f)(2) | Approval of red illuminated bar on three sides of canopy, if requested by applicant. [See para. 4, above] | TBD* |
| 30-20(f)(2) 30-20(1) | Approval of 2 canopy signs as additional secondary signs, in the event the existing 2 secondary wall signs remain on building. [See para. 4, above] | TBD* |
| | Extension of non-conforming use | |
| 30-21(b) BO#11-93(4) Cond. 12 | Approval for extension of non-conforming use to allow accessory retail convenience operations in conjunction with gasoline service station on site zoned BU-1. [See para. 3, above] | TBD* |
| | Item | |
| 30-23 | Amend plan(s) approved pursuant to BO #501-64, 349-70, 677-73, and 11-93(4) to the extent necessary. | X |
| 30-23(b)(6) | Approval of site plan identifying all sign locations. | X |
| 30-23(b)(8) | Approval of sign plan pertaining to proposed main freestanding identification sign. | X |
| 30-23(b)(8) | Approval of sign plan pertaining to altered second freestanding sign. | X |
| 30-23(b)(8) | Approval of sign plan and elevation plan approving canopy signs. | X |
| 30-23(b)(6) | Approval of landscape plan. | X |

Zoning Relief Summary (cont.)

| <i>Ordinance</i> | <i>SpecialPerm</i> | <i>Action Re</i> |
|-------------------------------------|---|-------------------------|
| 30-24(d) Prior BO | Amend prior Board Order BO# 501-64, 349-70, 677-73, and 11-93(4), to the extent necessary. | X |
| 30-24(d) BO#11-93(4) Cond. 3 | Amend prior Board Order BO# 11-93(4), Cond. 3 pertaining to limitations on pennants. [See para. 7 (d), above] | X |
| 30-24(d) BO#11-93(4) Cond. 8 | Amend prior Board Order BO# 11-93(4), deleting Cond. 8 prohibiting canopy signs. [See para. 4, above] | |
| 30-24(d) BO#11-93(4) Cond. 11 | Amend prior Board Order BO# 11-93(4), Cond. 11 pertaining to limitations on self-serve pumping islands. [See para. 5, above]. | |
| 30-24(d) BO#11-93(4) Cond. 12 | Amend prior Board Order BO# 11-93(4), Cond. 12 pertaining to limitations on food service. | X |
| 30-24(d) | Approval of applicable exceptions and special permit(s). | X |

TBD* = To be determined

Reference materials

- Board Order #501-64, Sept. 14, 1964 authorizes a gasoline service station and certain signs.
- Board Order #394-70, Dec. 21, 1970 authorizes improvements; limits use to gasoline and service station.
- Board Order #677-73, Nov. 19, 1973 authorizes pumps and storage tank for low lead gas.
- Board Order #11-93(4) authorizes self-service station and canopy but prohibits any signs on the canopy. Authorizes a second small-scale free standing pricing sign.
- Letter from G. Michael Peirce, June 15, 2007, Re: 979 Watertown St./service station signage upgrades/special permit amendment/possible extension of non-conforming structure.
- Letter from G. Michael Peirce, August 1, 2007 responding to multiple issues and sign violations.

Plans reviewed:

- Plan titled "Site Plan", prepared for Nouria Energy, Newton, MA, Watertown St. & Eden Ave., Sheet C-1, dated 11/3/06, last revised 11/17/06, prepared by Ayoub Engineering, 414 Benefit St., Pawtucket, RI 02861, bearing no stamp or signature of a registered professional.
- Plan titled "Site Plan", prepared for Nouria Energy, Newton, MA, Watertown St. & Eden Ave., Sheet C-1, dated 1/15/07, last revised 6/4/07, prepared by Ayoub Engineering, 414 Benefit St., Pawtucket, RI 02861, bearing no stamp or signature of a registered professional.
- Plan titled "Area Plan", prepared for Nouria Energy, Newton, MA, Watertown St. & Eden Ave., Sheet RM, dated 5/1/07, prepared by Ayoub Engineering, 414 Benefit St., Pawtucket, RI 02861, bearing no stamp or signature of a registered professional.
- Sketch of proposed sales/waiting area and snack shop bearing no title, date, stamp or signature.